



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0283]

Hours of Service of Drivers: National Pork Producers Council; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from the National Pork Producers Council (NPPC) on behalf of its members and other agricultural organizations for an exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. The exemption would enable all CMV drivers transporting livestock to operate without taking a 30-minute break during the work day if 8 hours have passed since the last off-duty period of at least 30 minutes. FMCSA considers the request to be on behalf of all motor carriers and drivers when transporting livestock. FMCSA requests public comment on the application for exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2013-0283 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the online instructions for submitting comments.
- Fax: 1-202-493-2251.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number.

For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to www.regulations.gov, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the “help” section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

Submitting Comments: You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to www.regulations.gov and in the search box insert the docket number “FMCSA-2013-0283” and click the SEARCH button. When the new screen appears, click on the blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

Viewing Comments and Documents: To view comments, as well as any documents mentioned in this notice, go to www.regulations.gov and in the search box insert the docket number “FMCSA-2013-0283” and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to the proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; Telephone: 202-366-4325. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

National Pork Producers Council Waiver and Exemption Request

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its hours-of-service (HOS) regulations for drivers of property-carrying commercial motor vehicles (CMVs). The final rule adopted several changes to the HOS regulations, including a new provision requiring drivers to take a rest break during the work day under certain circumstances. Drivers may drive a CMV only if a period of 8 hours or less

has passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break. Drivers who already take shorter breaks during the work day could comply with the rule by taking one of the shorter breaks and extending it to 30 minutes. The new requirement took effect on July 1, 2013.

On June 19, 2013, FMCSA received a combined request for a 90-day waiver and an application for an exemption from the National Pork Producers Council (NPPC) on behalf of itself and the following organizations:

- Agricultural and Food Transporters Conference of the American Trucking Associations;
- American Farm Bureau Federation;
- American Feed Industry Association;
- American Meat Institute;
- Livestock Marketing Association;
- National Cattlemen's Beef Association;
- National Chicken Council;
- National Milk Producers Federation;
- National Turkey Federation;
- North American Meat Association;

- Professional Rodeo Cowboys Association; and,
- U.S. Poultry and Egg Association.

The NPPC requested a waiver and exemption from the minimum 30-minute “rest break” provisions of 49 CFR 395.3(a)(3)(ii) for drivers transporting livestock. A copy of the NPPC’s waiver and exemption request is included in the docket referenced at the beginning of this notice.

The NPPC stated that complying with the 30-minute rest break rule will cause livestock producers and their drivers irreparable harm, place the health and welfare of the livestock at risk, and provide no apparent benefit to public safety, while forcing the livestock industry and their drivers to choose between the humane handling of animals or compliance with the rule.

The NPPC explained that the process of transporting livestock, whether to slaughter, for transfer of ownership, or for purposes of breeding or simply finding forage for feed, is a significant concern to the agricultural industry. The animals face a variety of stresses including temperature, humidity, and weather conditions.

During the summer months, exposure to heat is one of the greatest concerns in maintaining the animals’ well-being. This is especially challenging for the transportation of pigs because these animals do not sweat and are subject to heat stress. When heat stress occurs, a pig’s body temperature rises to a level that it cannot control through its normal panting mechanisms. Under the industry’s guidelines, drivers are directed to avoid stopping in temperatures greater than 80 degrees. Drivers are advised to stop only when animals will be immediately unloaded or when safety becomes an issue. If the

vehicle must be stopped, drivers are required to stay with the animals and provide them with water to help keep them cool.

When temperature and humidity result in a heat index equal to or greater than 100 degrees Fahrenheit, cattle also are placed at significant health risk. When cattle are stressed under extreme heat conditions, they are more likely to become non-ambulatory, sick, and even die. Non-ambulatory cattle are banned from entering the food system. Current industry guidelines recommend that drivers avoid stopping as internal trailer temperatures will then increase rapidly because of the loss of airflow through the trailer and heat production from the animals.

During the winter months, exposure of the animals to cold is also a serious concern in maintaining the animals' well-being. Extremely low temperatures combined with wind can result in dangerous wind-chills. These can be especially harmful to pigs, but are also risk factors for the transportation of other livestock.

Population of Drivers and Carriers Engaged in Livestock Transportation

Although the NPPC did not provide information on the number of carriers and drivers to be included in the waiver and exemption it requested, FMCSA reviewed its Motor Carrier Management Information System (MCMIS) to determine this information. MCMIS includes the information reported to the Agency by carriers submitting the Motor Carrier Identification Report (FMCSA Form MCS-150), required by 49 CFR 390.19. As of July 3, 2013, MCMIS lists 64,892 motor carriers that identified livestock as a type (though not necessarily the only type) of cargo they transported. These carriers operate 187,606 vehicles and employ 242,676 drivers. And 126,471 of these drivers operate within a 100 air-mile radius of their work-reporting location – a fact that is

important because existing statutory exemptions provide relief from the HOS requirements for these drivers.¹

Section 32101(d) of “Moving Ahead for Progress in the 21st Century Act” (MAP-21) (Pub. L. 112-141, 126 Stat. 405), enacted on July 6, 2012, expanded that 100 air-mile radius provided by the National Highway System Designation Act of 1995 to 150 air miles; FMCSA implemented the provision with a final rule published on March 14, 2013 (78 FR 16189). Therefore, the exemption would not be applicable to drivers whose operation is limited to 150 air-miles of their work-reporting location, leaving fewer than 116,205 drivers likely to utilize the requested relief from the 30-minute rest break provision.

In addition, section 32934 of MAP-21 provides statutory exemptions from most of the FMCSRs, including those pertaining to HOS, the commercial driver’s license and driver qualification requirements, for drivers of “covered farm vehicles” (CFVs), a term defined in detail by MAP-21. Among other things, CFV drivers must be owners or operators of farms or ranches, or their employees or family members; for-hire motor carriers are not eligible for the exemptions provided by section 32934. These exemptions are explained in the March 14, 2013, final rule mentioned above.

Waiver Granted

Based on the NPPC’s application and additional analysis by FMCSA, on July 11, 2013, the Agency granted a 90-day waiver, effective from July 11, 2013, through

¹ Section 345 of the National Highway System Designation Act of 1995 (the NHS Act) (Pub. L. 104-69, 109 Stat. 613), enacted on November 28, 1995, implemented by 49 CFR 395.1(k), provided relief from the HOS requirements for drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if “the transportation is limited to an area within a 100 air-mile radius from the source of the commodities or the distribution point for the farm supplies and is during the planting and harvesting seasons within such State, as determined by the State.”

October 9, 2013, from the rest break requirement of 49 CFR 395.3(a)(3)(ii) for drivers transporting livestock as defined in the Emergency Livestock Feed Assistance Act of 1988, as amended (the 1988 Act) [7 U.S.C. § 1471(2)] (78 FR 41716.) The term “livestock” means “cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry (including egg-producing poultry), fish used for food, and other animals designated by the Secretary of Agriculture that are part of a foundation herd (including dairy producing cattle) or offspring, or are purchased as part of a normal operation and not to obtain additional benefits under [the 1988 Act].”

The waiver is further limited to motor carriers that have a “satisfactory” FMCSA safety rating or are “unrated;” motor carriers with “conditional” or “unsatisfactory” safety ratings are prohibited from utilizing this waiver.

Because a waiver may not be granted for more than 90 days and may not be renewed, the NPPC also requested an exemption, which may extend up to 2 years and may be renewed (49 CFR part 381). The exemption would be issued to the same carriers and drivers and under the same terms and conditions as the waiver, except that the exemption would be for a 2-year period.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on NPPC’s application for an exemption from certain provisions of the driver’s hours-of-service rules in 49 CFR part 395. The Agency will consider all comments received by close of business on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this

notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: August 6, 2013

Larry W. Minor
Associate Administrator for Policy

**[FR Doc. 2013-19387 Filed 08/09/2013 at 8:45 am; Publication Date:
08/12/2013]**